

REMARKS

Claims 1-27 are pending.

Claims 1-3, 5, and 17 stand rejected under 35 USC §103(a) as being allegedly unpatentable over Fijoleck et al. (US 6,510,162) in view of Hyziak et al. (US 5,682,460).

Claims 4, 4-16, and 18-27 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Rejection under 35 USC §103(a) – claims 1-3, 5, and 17

Claims 1-3, 5, and 17 stand rejected under 35 USC §103(a) as being allegedly unpatentable over Fijoleck et al. (US 6,510,162) in view of Hyziak et al. (US 5,682,460). This rejection is respectfully traversed.

Under MPEP §706.02(j), in order to establish a prima facie case of obviousness required for a §103 rejection, three basic criteria must be met: (1) there must be some suggestion or motivation either in the references or knowledge generally available to modify the reference or combine reference teachings (MPEP §2143.01), (2) a reasonable expectation of success (MPEP §2143.02), and (3) the prior art must teach or suggest all the claim limitations (MPEP §2143.03). See In re Royka, 490 F. 2d 981, 180 USPQ 580 (CCPA 1974).

The Examiner stated that column 19, lines 38 to 46, and column 8, lines 1 to 7, of Fijolek (U.S. Patent No. 6,510,162), disclose a cable modem system having the capability of monitoring data channel traffic usage wherein the cable modem supports transmission and reception of IP datagrams, and therefore clearly anticipate monitoring traffic information relating to datagrams as recited in claim 1 of the present invention.

However, according to column 19, lines 38 to 46, of Fijolek, one data channel is used by a plurality of cable modems. Hence, even if the capability is provided to monitor the total usage of the data channel, the usage of that data channel by each cable modem cannot be monitored.

In contrast, the present invention monitors traffic information relating to datagrams that have been transmitted by a user to a network or the datagrams that have been received from said network by said user, and so the subjects that are monitored are completely different for the presently invention and Fijolek. Even if Fijolek disclosed the point of monitoring data channel usage, monitoring traffic information relating to datagrams transmitted by each user to a network or the datagrams that have been received from said network by each user as in the present invention would not be obvious.

In addition, the Examiner points out that the grounds for our argument is based only on the disclosure in the embodiments of the specification (page 12, line 15) and not on the recitation of the claims.

However, as stated above, data channel monitoring as disclosed in Fijolek differs completely from monitoring of traffic information relating to datagrams as disclosed in the present invention. Therefore, our argument that "Fijolek does not disclose monitoring of traffic information related to datagrams" is based on the recitation of claim 1.

Furthermore, the Examiner states that Fijolek, column 3, lines 35 to 41, which discloses the point of monitoring channel usage to identify unbalanced conditions, and column 18, lines 30 to 49, which discloses the point of using configuration, type-of-service, flow and service identification information to balance channel usage and improve operation of the system, clearly anticipate using a preference value. Also, the Examiner

states that Hyziak, Fig. 3, clearly shows preference values, i.e., cost, time security, quality of service, reporting option, handling instruction, disposition request, quantifying the results of evaluation of the user's usage of communications, being inserted in the header.

However, each information type used in Fijolek is a parameter employed when initializing the connection between the cable modem (CM) 16 and Cable Modem Termination System ("CMTS") 12. As the Examiner points out, these parameters may be determined from the result of channel usage monitoring, but as stated above, the data channel monitoring in Fijolek is completely different from the monitoring of traffic information relating to datagrams in the presently claimed invention. Therefore, it would be difficult to anticipate the preference value of the present invention from the parameters disclosed in Fijolek. Moreover, Fijolek does not disclose insertion of parameters into the header.

As the Examiner also pointed out, Figs. 3 and 4 of Hyziak (U.S. Patent No. 5,682,460), do indeed disclose the insertion of preference values in the datagram for performing prioritized forwarding of the datagram according to the preference value specified.

However, as disclosed in column 4, lines 39 to 41, of Hyziak, the preferences of Hyziak permit the sender to control information delivery, with specific examples given in column 4, line 47, to column 5, line 24, as well as in Fig. 1. Referring to the specific example given in Fig. 1, cost, time security, quality of service, reporting options, handling instructions and disposition request are stored as preferences. These preferences are clearly different from the preference value as used in the present invention (which is the quantification of results of evaluating the user's usage of communications), so that

using preference values as disclosed in Hyziak could not eliminate a state of congestion collapse of the network.

Thus, Applicant submits that claims 1-3, 5, and 17 recite novel subject matter which distinguishes over any possible combination of Fijolek and Hyziak.

Conclusion


For all of the above reasons, applicants submit that the claims are now in proper form, and that the amended claims all define patentable subject matter over the prior art. Therefore, Applicants submit that this application is now in condition for allowance.

Request for allowance

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited. If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Respectfully submitted,
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